

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 2ND JANUARY 2007 / 12TH PAUSHA 1928

OP.No. 2495 of 2002(V)

PETITIONER:

- 1. T.SUSHEELA, D/O. M.R.PANICKER,
LAKSHMI RANGA, POST KODUMBA, PALAKKAD DISTRICT.**
- 2. T.CHANDRIKA, D/O. M.R.PANICKER,
LAKSHMI MANDIR, P.O. AMBALAPARA, OTTAPPALAM TALUK,
PALAKKAD DISTRICT.**

**BY ADV. SRI.P.N.KRISHNANKUTTY ACHAN(SR.)
SRI.T.SETHUMADHAVAN**

RESPONDENTS:

- 1. ASSISTANT EXECUTIVE ENGINEER,
P.H.SUB DIVISION, KERALA WATER AUTHORITY,
PALAKKAD.**
- 2. ASSISTANT ENGINEER, P.H. SUB DIVISION,
KERALA WATER AUTHORITY, PALAKKAD DISTRICT.**
- 3. KERALA WATER AUTHORITY-REPRESENTED BY
ITS CHAIRMAN, THIRUVANANTHAPURAM.**

**BY ADV. SRI.M.V.MATHAI MUTHIRENTHY, SC, KWA
SRI.C.RASHEED, SC, KWA
SMT.AMBIKA DEVI, SC, KWA**

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 02/01/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

S. SIRI JAGAN, J.

.....
O.P. No. 2495 OF 2002 V
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Dated this the 2nd day of January, 2007

J U D G M E N T

The petitioners are sisters. They are the children of late M.R.Panicker. The petitioners' father constructed a residential complex at Mettupalayam Street in Palakkad city during 1969-70 consisting of ten residential flats and also two shop rooms. After the death of the father, the petitioners and their brothers and sisters partitioned the flats among themselves and the petitioners were allotted two flats each. There is water connection to all these flats but no water connection is given to the two shop rooms. Till the year 2000, these flats were assessed to water charge at the rate applicable to domestic consumers. However, suddenly by Ext.P1 bill, the petitioners were directed to pay water charges at the rate applicable to non domestic consumers. Under threat of disconnection, the petitioners were forced to pay the amount. The petitioners' contention is that this was at the instance of one Sri.Jayachandran, the then Assistant Engineer in the office of the 1st respondent. Thereafter, the said Jayachandran was transferred from that office and again the flats were assessed at the rates applicable to domestic consumers. Later on, again the said Jayachandran happened

to be transferred to the 1st respondent's office and he again took steps to treat the petitioners' flats as non-domestic for the purpose of collection of water charges. It is under the above circumstances, the petitioners have approached this court seeking the following reliefs:

(i) issue a writ of mandamus or any other appropriate writ, order or direction to declare that the petitioners are liable to pay the water charges to their residential flats let out to tenants situated at Mettupalayam street in Palakkad city at the domestic tariff fixed by the respondents;

(ii) issue a writ of mandamus or any other appropriate writ order or direction forbidding the respondents from collecting water charges from the petitioners at non-domestic rate in respect of consumer No.1629, 18149 and 18150.

2. The respondents are stated to have filed a counter affidavit. But the same is not available in the file. The counsel for the petitioners has made available to me a copy of the counter affidavit stated to be so filed. The contention of the respondents in this regard is contained in paragraph 2 of the counter affidavit, which reads as under:

“It is respectfully submitted that petitioners are consumers of Kerala Water Authority having consumer Nos.18149 and 18150 respectively allotted to Door No.12/1069 and 12/1064 within the jurisdiction of the 1st respondent. Admittedly, both these water connections are used for the apartments which is rented out to different tenants. Consumer No.1629 refers to a bulk service connection discharging freely into a common sump of residential cum shopping complex owned by Mr.M.R.Panicker and rented out to different

tenants. Here, the consumer of Kerala Water Authority is the owner of the residential cum shopping complex and not the tenants who occupy and vacate the apartments or shops according to the whims and fancies of the consumer. The consumer is letting out his flats/rooms for his commercial/business purposes. This water connection will not come under the domestic category as it is not used for the drinking and cooking purpose of the consumer."

3. I have considered the rival contentions in detail.

4. The respondents have not pointed out any provision of law by which the respondents are empowered to charge flats and houses rented out as applicable to non-domestic consumers. A flat or a house whether it is occupied by the owner himself or rented out the use of water in that flat or house can only be for domestic purpose unless the Water Authority proves by some evidence that the flat or house is actually put to a non-domestic use. Admittedly, apart from the contention that these flats are being rented out by the petitioners, there is no allegation whatsoever that the persons who are occupying the flats are putting the flats to non-domestic use. Further, Ext.P3 circular issued by the Kerala Water Authority would also support the contention that residential flats and colonies who have common sumps are to be assessed to water charges by installing mass meters and charging each householder for the quantity at the appropriate slab of the domestic tariff. In view of the same, I do not think that the respondents are entitled to charge water consumption in the flats owned by the

petitioners at non-domestic tariff. In the above circumstances, it is declared that the petitioners are liable to pay water charges in respect of their residential flats, which is the subject matter of this original petition, situated at Mettupalayam street in Palakkad city only at the rate applicable under domestic tariff. Therefore, the respondents are directed not to collect water charges from the petitioners at non-domestic rates in respect of the consumer Nos.1629, 18149 and 18150. Any amount already collected for previous periods in excess of the rate applicable to domestic consumers shall be refunded to the petitioners, within two months from the date of receipt of a copy of this judgment, or else the same shall be adjusted against future water charges of the petitioners.

The original petition is disposed of as above.

(S. SIRI JAGAN, JUDGE)

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S. SIRI JAGAN , J.

OP No.2495/02 V

J U D G M E N T

2nd January, 2007